UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 35, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 03-11794-DPW
IPSWICH BAY GLASS CO., Defendant.	)	

MEMORANDUM AND ORDER
June 2, 2004

This is an action to enforce an arbitration award arising from a labor dispute. After a jointly-selected arbitrator ruled in favor of plaintiff Painters & Allied Trades District Council No. 35, defendant Ipswich Bay Glass Co. refused to pay a portion of the award, arguing that the arbitrator had exceeded his authority. For the reasons set forth below, I will grant plaintiff's motion for summary judgment, prejudgment interest, and attorneys' fees. On the agreement of the parties, I will remand the precise assessment of damages to the arbitrator.

I. BACKGROUND

A. Parties

Plaintiff Painters & Allied Trades District Council No. 35 ("the Union") is a labor organization within the meaning of 29 U.S.C. § 185 and is the authorized collective bargaining representative for painters and allied trades, including glaziers, employed in Maine, Massachusetts, New Hampshire, and

Vermont. It is headquartered in Roslindale, Massachusetts.

Defendant Ipswich Bay Glass Co. ("the Company") is a glazing contractor located in Rowley, Massachusetts that employs between 75 and 125 glaziers, and is an employer within the meaning of 29 U.S.C. § 152. It is a member of the Glass Employers Association of New England, Inc. ("GEANE"), a trade group of approximately 35 contractors located mainly in Massachusetts. By virtue of its membership in GEANE, it is a party to a collective bargaining agreement with the Union.

B. Facts

1. The Collective Bargaining Agreement(s)

Before June 30, 2002 glaziers (who were at one time represented by a different union) had a collective bargaining agreement with GEANE, and painters had a collective bargaining agreement with the Painting & Finishing Employers Association of New England ("PFEANE"). Both of those agreements expired on June 30, 2002. Before the agreements expired, the Union, GEANE, and PFEANE agreed to negotiate jointly for a successor collective bargaining agreement that would cover both glaziers and painters.

Before me there has been asserted a dispute as to what emerged from those negotiations. The Union submits a printed but unsigned contract ("the Union CBA") that, by its terms, is effective from July 1, 2002 to June 30, 2006. First Harriman Aff. (Dec. 18, 2003), ¶ 5 & Ex. A. The Company -- through its President, Herman Patrican, who was also the Chairman of GEANE during the 2002 contract negotiations -- contends that the

contract propounded by the Union was never executed, and in fact was a draft that, when printed, did not reflect agreed-upon changes. Patrican Aff., ¶ 8. The Company instead submits a document ("the Company CBA") – also unsigned, clearly still in draft format, and apparently printed from a word processor -- that, it contends, reflects the changes that the parties had already agreed to by December 2002. Id. ¶ 8 & Ex. 1. In response, Ralph Harriman, the Union's Business Manager, avers that the Union CBA is the only collective bargaining agreement between the Union and the Company, and is the agreement under which the parties operated in December 2002 and continue to operate today. Second Harriman Aff. (Feb. 6, 2004), ¶ 4.

Both versions, however, provide that:

> Except as agreed otherwise by mutual agreement, the regular work week shall consist of forty (40) hours per week, divided into five (5) work days, from Monday to Friday inclusive of eight (8) hours each.

Art. VI § 2. Another provision exhaustively lists holidays, including Christmas Day, to be observed on the day "designated by the State and/or Federal Government or the appropriate state building trades council." Art. VI § 11. The day before Christmas -- December 24 -- is not listed as a holiday, nor was it in 2002 designated by an appropriate body as the date on which Christmas would be observed.

Both versions contain a "lack of work" clause:

> All Employees who show up on jobs where they are not able to work shall receive two (2) hours pay at straight time unless lack of work is due to an Act of God or due to conditions beyond the control of the

> Employer such as loss of power, picket lines, bomb threats, etc.

Art. VII § 6.

The only area relevant to this case where the agreements differ is the article relating to fringe benefit (health, pension, and annuity) funds. The Union CBA provides, for each fund, that payments shall be "made in accordance with the provisions of Article IX."[1] Union CBA Art. VIII §§ 1-3. The Company CBA modifies this sentence in each instance to indicate that fringe benefit payments shall be "made in accordance with the provisions of Article IX on all hours worked." Company CBA Art. VIII §§ 1-3 (emphasis in original).

2. The December 24, 2002 Shutdown

In mid-December 2002 the Company informed its workers that on December 24 it would end the workday at noon. According to Patrican, this was done for three reasons: alleged lack of work, concern for employee safety given that employees allegedly drink during lunchtime on the day before Christmas, and a concern for employee quality of life. Patrican Aff. ¶¶ 9-10. On December 24, 2002 all Company employees were sent home at noon.

3. The Arbitration

On January 14, 2003 the Union brought a grievance against the Company to the Joint Trade Board, a joint Union-PFEANE-GEANE body authorized by the collective bargaining agreement to adjudicate "all questions of interpretation of [the] agreement

[1]Article IX generally concerns the benefit funds.

and all grievances or complaints." Art. XIX, § 5. The Union contended that the Company violated Article VI §§ 2 & 11 of the CBA when it sent its employees home at noon without the Union's consent. On January 24, 2003 the Joint Trade Board conducted a hearing, but was unable to reach a decision.

Under the CBA, "upon failure of the Joint Trade Board to adjust a grievance or to agree on a decision or finding, the matter shall be submitted to an impartial arbitrator (mutually acceptable to the UNION and the ASSOCIATION), within 72 hours, if petitioned to do so by either party to the complaint." Art. XIX, § 16. On approximately January 28, 2003 the Union informed both the Joint Trade Board and the Company that it intended to seek arbitration.

The Union and the Company jointly selected Robert M. O'Brien ("the Arbitrator") to arbitrate the dispute. On April 28, 2003 the Arbitrator conducted a hearing, and thereafter received evidence and written arguments by both parties. The parties submitted the Union CBA as a joint exhibit; the Company did not argue, either at the hearing or in subsequent written arguments, that the Union CBA was invalid or not the proper agreement. Second Harriman Aff. ¶ 5. The Company's principal argument was that the closure was justified under the "lack of work" provision.

On June 9, 2003 the Arbitrator rendered a decision in favor of the Union. He found that "[t]here [was] not a scintilla of evidence in the record before [him] that <u>any</u> contractor for whom

the Company was a subcontractor closed at noon on December 24, 2002," but rather that the Company "of its own volition[] chose to close all its jobs" and that "there was work available for the Company's glaziers after noon on December 24, 2002." Arb. Award at 6. He also found no evidence supporting the Company's purported concern for employee safety, and concluded that "the Company's glaziers who were not allowed to work the regular workday on December 24, 2002[] must be made whole for all their lost wages and benefits, including the contributions required by Article VII of the collective bargaining Agreement." Id. at 7.

It was not until after the Arbitrator issued his award that the Company took the position that the collective bargaining agreement provided for fringe benefits only for hours worked, not hours paid.[2] It offered to pay wages, but not fringe benefit contributions, to the affected employees. Patrican Aff. ¶ 17. The Union insisted on full compliance with the Arbitrator's award.

C. Procedural History

On September 17, 2003 the Union filed this action to enforce the arbitration award, alleging that the Company had refused to comply with the award without lawful justification, and requesting the court to order the Company to pay the wages and fringe benefits specified in the award, plus prejudgment

[2]It is not clear from the record whether, at this stage, the Company was relying on the Union CBA that it submitted to the Arbitrator, or the Company CBA upon which it now relies.

interest, costs, and attorneys' fees. On October 8, 2003 the Company filed an answer in which it denied that it had no lawful justification for refusing to comply with the award. It counterclaimed, alleging that the arbitrator had exceeded his authority by going beyond the four corners of the agreement, and requested the court to vacate the award or modify it to require payment of wages only.

The parties cross-moved for summary judgment, and a hearing was conducted on April 7, 2004.

II. DISCUSSION

A. Standard of Review

1. Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment must make a preliminary showing that no genuine issue of material fact exists. Nat'l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995), cert. denied, 515 U.S. 1103 (1995). Once the movant has made such a showing, the nonmovant must point to specific facts demonstrating that there is, indeed, a trialworthy issue. Id.

A fact is "material" if it has the "potential to affect the outcome of the suit under the applicable law." Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000), and a "genuine" issue is one supported by such evidence that "a 'reasonable jury, drawing favorable inferences,' could resolve it in favor of the nonmoving party." Triangle Trading Co. v. Robroy Indus., Inc., 200 F.3d 1, 2 (1st Cir. 1999) (quoting Smith v. F.W. Morse & Co., 76 F.3d 413, 427 (1st Cir. 1996)). "[C]onclusory allegations, improbable inferences, and unsupported speculation," are insufficient to establish a genuine dispute of fact. Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990).

2. Review of an Arbitration Decision

Judicial review of a labor arbitration decision is "very narrow and very deferential." JCI Communications, Inc. v. IBEW, Local 103, 324 F.3d 42, 48 (1st Cir. 2003); Teamsters Local Union No. 42 v. Supervalu, Inc., 212 F.3d 59, 61 (1st Cir. 2000) ("Arbitral awards are nearly impervious to judicial oversight."); Me. Cent. R.R. Co. v. Bhd. of Maint. of Way Employees, 873 F.2d 425, 428 (1st Cir. 1989) ("Judicial review of an arbitration award is among the narrowest known in the law."). In essence, the court reviews whether the arbitrator did his job, not whether he did it well. The court may not reconsider the merits, even if there are alleged errors of fact or of contractual interpretation, so long as the arbitrator's award "draws its essence from the collective bargaining agreement," and is not

merely "his own brand of industrial justice." United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1987). "So long as the arbitrator, acting within the scope of his delegated authority, is arguably construing the contract, his decision must stand." El Dorado Tech. Servs., Inc. v. Union General de Trabajadores, 961 F.2d 317, 319 (1st Cir. 1992).

The court may overturn an arbitrator's decision "only in rare circumstances." JCI Communications, 324 F.3d at 48. Such circumstances could include "misconduct by the arbitrator, [or] when the arbitrator exceeded the scope of her authority, or when the award was made in manifest disregard of the law," id.; if the decision was "unfounded in reason and fact[,] based on reasoning so palpably faulty that no judge, or group of judges, ever could conceivably have made such a ruling[,] or mistakenly based on a crucial assumption that is concededly a non-fact," Advest, Inc. v. McCarthy, 914 F.2d 6, 8-9 (1st Cir. 1990); or if the decision was "procured by the parties through fraud or through the arbitrator's dishonesty," United Paperworkers Int'l Union, 484 U.S. at 38.

Absent the above circumstances, "a court should uphold an award that depends on an arbitrator's interpretation of a collective bargaining agreement if it can find, within the four corners of the agreement, any plausible basis for that interpretation." El Dorado Tech. Servs., 961 F.2d at 319.

B. Analysis

1. The Applicable Collective Bargaining Agreement

The first question is whether the Arbitrator was correct to base his decision upon the Union CBA. The Company contends that the Union CBA was not actually the CBA in force between the parties on December 24, 2002. The Union, while conceding that the Union CBA was not signed by the Company, maintains that it was the agreement that the parties were operating under on December 24, 2002, and furthermore that the Company waived its right to challenge the validity of the Union CBA by not presenting this argument to the Arbitrator.

If I were required to decide this issue ab initio, I would find the record woefully incomplete. Virtually no evidence has been submitted concerning the expired collective bargaining agreements; the course of the negotiations; statements or conduct (by either party) indicating an intent to abide by either revised version of the CBA (or, for that matter, the prior agreements) until an agreement could be finalized; or even whether any CBA was eventually executed and ratified. I would therefore be unable to determine as a matter of law which CBA, if any, was lawfully in effect on December 24, 2002.

However, given the posture of this case, I need not make any such determination. The Company has not disputed the Union's contention that, at the arbitration, the parties submitted the Union CBA as a joint exhibit, and the Company did not argue, either at the arbitration hearing or in subsequent written arguments, that the Union CBA was invalid or not the proper agreement. Second Harriman Aff. ¶ 5. The only questions

submitted to the Arbitrator were "Did Ipswich Bay Glass Company violate the collective bargaining Agreement with the Union when it sent its employees home at noon on December 24, 2002, and did not pay its glaziers for the whole day?" and "If so, what shall be the remedy?". In sum, the Company agreed to arbitrate under one CBA, and now argues in this proceeding that the decision was improper under another.

When a party to an arbitration "proceeded through . . . the arbitration process[] without raising any reservation" as to a certain issue, that issue cannot be raised for the first time in federal court. Dorado Beach Hotel Corp. v. Union de Trabajadores de la Industria Gastronomica, Local 610, 959 F.2d 2, 5-6 (1st Cir. 1992); Teamsters Local Union No. 42, 212 F.3d at 68 ("[T]here is no sign that Local 42 ever argued this point to the arbitrator, and it is therefore procedurally defaulted."); N. Adams Reg'l Hosp. v. Mass. Nurses Ass'n, 889 F. Supp. 507, 512 (D. Mass. 1995) (Ponsor, J., adopting report of Neiman, M.J.) ("[A] party who fails to assert an argument during arbitration waives the right to assert the argument in subsequent litigation relating to the enforcement or vacation of the arbitration award."), aff'd, 74 F.3d 346 (1st Cir. 1996).

Because the Company failed to dispute the applicability of the Union CBA before the Arbitrator, I find that it has waived that issue, and therefore that this court must presume that the Arbitrator was correct to apply the Union CBA.

2. The Fringe Benefits Dispute

The Company concedes that it is required to pay back wages, and disputes only the award of fringe benefit contributions. Its prime contention is that, since the glaziers did not actually work after noon on December 24, 2002, they are not entitled to have fringe benefit contributions paid on their behalf. Once the Company is forced to argue under the Union CBA – which, unlike the Company CBA, does not specify that fringe benefits contributions are only for "hours worked" -- this argument loses quite a bit of steam. The Company appears to rely upon (without actually citing) a provision stating that contributions are considered delinquent if not received "by the 26th day of the month following the month the work was performed or for weekly submittals, the Wednesday of the week following the week in which the work is performed." Art. IX, § 3. Since the work wasn't actually performed, the Company argues, no contributions are owed.[3]

This argument misses the point: the only reason the glaziers did not work on the afternoon of that date was that the Company (by its own present admission) breached the CBA. Had the Company

[3]One is left with a distinct impression that the Company's argument in this regard is left over from a previous theory. The Company argued before the Arbitrator, unsuccessfully, that the shutdown was justified by a lack of work. Had the Arbitrator agreed, the Company would have been obligated to pay "two (2) hours pay at straight time." Art. VII § 6. There is a colorable argument that, in such circumstances, fringe benefit contributions are not required. However, this is irrelevant because the Arbitrator found that there was no lack of work. The award is fundamentally premised on a breach of Article VI § 2 (forty hour work week), not of Article VII § 6 (lack of work).

not sent the glaziers home early, they would have worked those hours, and been entitled to the related fringe benefit fund contributions.

While no specific provision of the CBA authorizes an award of back fringe benefit contributions as a remedy for a violation of the forty hour work week provision, neither does any provision prohibit it.[4] Absent a prohibition of such relief, the Arbitrator could order a remedy that restored the injured party to the position that it would have been in but for the breach:

> When parties wish to curb an arbitrator's remedial authority, they can draft a contract that specifically excludes certain remedies (such as back-pay) or limits these remedies to particular situations. Likewise, the parties can choose to provide pre-negotiated, exclusive remedies for a particular breach which the arbitrator may not disturb. Where, as here, the agreement neither requires nor bars particular remedies, the arbitrator's discretion "is at its zenith."

Kraft Foods, Inc. v. Office & Prof'l Employees Int'l Union, Local 1295, 203 F.3d 98, 102 (1st Cir. 2000) (quoting Advest, 914 F.2d at 11) (internal citations omitted).

I find that the Arbitrator's remedy was appropriate, well within his discretion, and drawn from the CBA.[5] Therefore, I will grant the Union's motion for summary judgment, and deny the

---

[4]It is perhaps relevant that Article IX expressly provides that the funds may (by arbitration or litigation) recover delinquent contributions. See Art. IX §§ 3(C)-(D). While this is not strictly such an action, it is in the same family.

[5]Though it is not necessary to reach this question given the standard of review, I further note that the Arbitrator's remedy seems to me completely appropriate for a violation of the type that he found.

Company's motion for summary judgment. Because the parties dispute whether two particular employees are entitled to share in the award flowing from the Arbitrator's decision, I will remand the assessment of the precise damage award to the Arbitrator for resolution.

3. Attorneys' Fees

The Union has also moved for attorneys' fees and costs.[6] While 29 U.S.C. § 185 does not specifically provide for attorneys' fees, "the remedies normally available when a party refuses to comply with an enforceable award . . . . include an award of attorneys' fees when a party 'without justification' contests an enforceable award." Courier-Citizen Co. v. Boston Electrotypers Union No. 11, 702 F.2d 273, 282 (1st Cir. 1983) (quoting Int'l Ass'n of Machinists & Aerospace Workers, Dist. 776 v. Tex. Steel Co., 639 F.2d 279, 283 (5th Cir. 1981)). While subjective bad faith is one ground for a fee award, fees are also available if the losing party acted "vexatiously." Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1974). "Vexatiously" means "'that the losing party's actions were "frivolous, unreasonable, or without foundation, even though

[6]The Union prayed for such relief in its complaint. It did not make a separate motion for fees, nor mention fees as part of its motion for summary judgment, but rather raised the request as part of its combined memorandum in reply to the Company's opposition memorandum and in opposition to the Company's motion for summary judgment. At the hearing on the summary judgment motions, I discussed the attorneys' fees request with the parties and established a schedule for submission of a statement of attorneys' fees by the Union and an opposition by the Company.

not brought in subjective bad faith."'" Local 285 v. Nonotuck Res. Assoc., 64 F.3d 735, 737-38 (1st Cir. 1995) (quoting Wash. Hosp. Ctr. v. SEIU, 746 F.2d 1503, 1510 (D.C. Cir. 1984)) (quoting Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978)).

In short, "subjective bad faith is not a prerequisite to a fee award." Local 285, 64 F.3d at 738. Rather, the court has discretion "to award attorney fees to the prevailing party when 'the losing party litigated the matter despite the fact that it was unable to present any rational arguments in support of its position.'" Int'l Ass'n of Heat & Frost Insulators v. Thermo-Guard Corp., 880 F. Supp. 42, 48 (D. Mass. 1995) (Wolf, J.) (quoting Brigham & Women's Hosp. v. Mass. Nurses Ass'n, 684 F. Supp. 1120, 1125 (D. Mass. 1988) (Caffrey, J.)).[7]

I find that the Company's refusal to comply with the arbitration award, both before and during this litigation, was unreasonable and without foundation. It is unreasonable and

[7]The CBA also provides that "[i]n the event that damages as determined by a Board decision are not paid within the stipulated time and legal action is necessary, attorney's fees and court costs" are also recoverable. Art. XX § 10. This section is not strictly applicable here, because this action is not an appeal of a Joint Trade Board decision; the Arbitrator's decision was the first on the merits. The CBA does not appear to contemplate this circumstance, and indeed specifies that "[t]he proceedings before the impartial arbitrator shall be in the nature of an appeal and the decision of the Joint Trade Board shall be upheld unless clearly erroneous." Art. XX § 2(A). At any rate, while there may be good reasons to treat the Arbitrator's decision for certain purposes as if it had been the Joint Trade Board's decision, I decline to reform the CBA to reflect what it should have said.

without foundation for an employer to agree to arbitration, submit a copy of the collective bargaining agreement, dispute liability before the arbitrator based on that agreement without ever challenging the validity of that agreement, refuse to pay the subsequent award on the purported basis that the arbitrator's award was unauthorized under a different agreement, and then not only defend against the union's federal action to enforce the arbitration decision, but counterclaim in that action.

I find that the Company asserted no reasonable arguments in support of its refusal to comply with the arbitration award. Its argument that this court should evaluate the Arbitrator's decision under the Company CBA was certain to fail, in light of clear governing precedent establishing that issues not raised before the Arbitrator are waived. Its argument that back benefit contributions were not available because benefits are supposed to be paid only for hours worked, even where the hours were not worked due to the Company's own breach, was also certain to fail, in light of clear governing precedent establishing the extremely deferential standard of review applied to an arbitral decision. The Company had no chance of prevailing in this court, and it knew (or should have known) it.[8]

For these reasons, I find that the Company's conduct in this dispute was "vexatious." The Union is therefore entitled to

[8]Though it is not necessary to my decision, I note that the Company, if it believed the award was invalid, could have brought an action to vacate it. Rather, the Company stalled for over three months, after which the Union sued to confirm the award.

reasonable attorneys' fees and costs incurred in litigating this matter in federal court. Upon review of the Union's statement of attorneys' fees, to which no specific objection was filed by the Company, I will award attorneys' fees and costs in the amount of $5,201.72.

4. Prejudgment interest

The district court has equitable discretion to award prejudgment interest in an action under 29 U.S.C. § 185. See Colon Velez v. P.R. Marine Mgmt., Inc., 957 F.2d 933, 941 (1st Cir. 1992). Prejudgment interest may be awarded on back wages. Cliftex Corp. v. Local 377, 625 F. Supp. 903, 908-09 (D. Mass. 1986) (Young, J.); see also Cruz v. Local Union No. 3, 34 F.3d 1148, 1161 (2d Cir. 1994) ("[I]t is ordinarily an abuse of discretion not to include pre-judgment interest in a back-pay award.") (emphasis in original; internal quotation marks and citations omitted). It follows logically that prejudgment interest may be awarded on back fringe benefit contributions, which are not materially different from wages.

Generally, the date of the arbitration award is the most logical date to begin measurement of prejudgment interest because the issuance of the award creates a debt to the prevailing party. Burke Distr. Corp. v. Int'l Bhd. of Teamsters, Local Union No. 122, 1986 WL 15732, at *4 (D. Mass. Oct. 6, 1986) (Zobel, J.); see also Cliftex, 625 F. Supp. at 908-09.

However, in this case the Union has only requested prejudgment interest from ten days after the arbitrator's award

issued, because the CBA states that "[i]n the event that damages as determined by a Board decision are not paid within the stipulated time and legal action is necessary," interest will be awarded "from the date ten (10) days after receipt of notification by the Joint Trade Board decision." Art. XX §§ 10(A)-(B). Article XX § 10 is not strictly applicable, because this case is an appeal of an arbitrator's decision, not the Board's. See supra note 7. However, I construe it as reflecting an important labor relations policy: as part of a last attempt to salvage labor-management relations, the CBA provides a ten-day window for the losing party to comply with an impartial decision without fear of further penalty. Consequently, I conclude that the policy should be respected here even though the provision does not technically govern this question.[9]

Because the Company had no valid reason to refuse to pay the arbitration award, and because I find the equitable factors favor the Union, I will grant the Union's request for prejudgment interest dating from June 19, 2003.

III. CONCLUSION

For the reasons set forth more fully above, the Arbitrator's

[9]I do not, however, find a similarly valuable policy to enforce in the provision defining the interest rate on Joint Board of Trade decisions as "1.5% per month up to $500 and 2% above prime rate per month over $500 or any other higher amount allowed by law or regulation." Art. XX § 10(A). Rather, in recognition that pre-judgment interest in a judicial proceeding such as this is a matter of the court's equitable discretion, I will apply the statutory prejudgment rate. See 28 U.S.C. § 1961(a).

award is hereby confirmed, with the following judgment and order.

1. The Union's motion for summary judgment is GRANTED, and the Company's motion for summary judgment is DENIED.

2. The Company shall comply with the Arbitrator's award and pay wages and fringe benefit contributions for the afternoon of December 24, 2002, plus prejudgment interest at the rate provided in 28 U.S.C. § 1961(a) from June 19, 2003. The precise damage award shall be determined by the Arbitrator, to whom this dispute is hereby remanded.

3. The Union's request for attorneys' fees and costs incurred in this litigation is GRANTED in the amount of $5,201.72.

/s/ Douglas P. Woodlock
_____
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE